

## Appendix G

### Pre-Decision Document

**DECISION DOCUMENT  
PREAUTHORIZATION OF A CERCLA SECTION 111(a) CLAIM**

**THE IRON HORSE PARK SUPERFUND SITE  
BILLERICA, MASSACHUSETTS**

**I. STATEMENT OF AUTHORITY**

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9611, authorizes the reimbursement of response costs incurred in carrying out the National Oil and Hazardous Substances Contingency Plan, as amended (NCP), 40 C.F.R. Part 300. Section 112 of CERCLA, 42 U.S.C. § 9612, directs the President to establish the forms and procedures for filing claims against the Hazardous Substance Superfund (Superfund or Fund). Executive Order 12580 (52 Fed. Reg. 2923, January 29, 1987) delegates to the Administrator of the Environmental Protection Agency (EPA) the responsibility for CERCLA claims and for establishing forms and procedures for such claims. The forms and procedures can be found in the claims procedures set forth at 40 C.F.R. Part 307, 58 Fed. Reg. 5460 (January 21, 1993). Executive Order 12580 also delegates to the EPA Administrator the authority to reach settlements pursuant to Section 122(b) of CERCLA, 42 U.S.C. § 9622(b). EPA Delegation 14-9 (July 24, 2002) delegates to EPA's Regional Administrators the authority to preauthorize claims against the Superfund and to approve reimbursement for claimed response costs.

**II. SITE BACKGROUND**

The Iron Horse Park Superfund Site (Site), located in Billerica, Massachusetts, is a 553-acre industrial complex which includes manufacturing and rail yard maintenance facilities, open storage areas, landfills, and wastewater lagoons. A long history of industrial activities at the Site, beginning in 1913, has resulted in the contamination of soil, groundwater, and surface water.

The Site was listed on the National Priorities List (NPL) in 1984. An Action Memorandum was signed on June 26, 1984, as part of an Immediate Removal Action under CERCLA to cap the Johns-Manville asbestos landfill located on the Site. In 1985, EPA began a Site Investigation. Following the completion in 1987 of the Phase I Remedial Investigation (RI), the Site was divided into three Operable Units (OUs). Remedial Actions have been completed at OU1 and OU2 of the Site. In 1997, EPA issued a Supplemental Remedial Investigation Report addressing OU3. In May of 2004, EPA issued a Feasibility Study (FS) Report for OU3, which addressed seven Areas of Concern (AOCs) and Site-wide surface water, groundwater, and sediments. EPA determined that the seven AOCs should be addressed in the Record of Decision (ROD) for OU3, and that Site-wide surface water, groundwater, and sediments would be addressed in a future ROD as OU4, after completion of additional site-specific studies.

On September 30, 2004, the EPA Regional Administrator for Region I signed the ROD for OU3. The total cost of the remedial action is estimated at \$23.5 million. The media of concern at OU3 are surface soil and subsurface soil. Contaminants detected most frequently include volatiles, semi-volatiles, pesticides, polychlorinated biphenyls (PCBs), asbestos, and metals. The seven AOCs comprising OU3 are:

AOC 1: B&M Railroad Landfill, a 14-acre landfill. The selected remedy is a hazardous waste cap at an estimated cost of \$9.66 million.

AOC 2: RSI Landfill, a 6-acre landfill. The selected remedy is a solid waste cap at an estimated cost of \$2.49 million.

AOC 3: B&M Locomotive Shop Disposal Area, an approximately 4-acre disposal area separated in two by a man-made channel. The selected remedy is a solid waste cap at an estimated cost of \$2.61 million.

AOC 4: B&M Oil/Sludge Recycling Area, a 6-acre area that was used for recycling oil and is now filled in. The selected remedy is a solid waste/asphalt cap at an estimated cost of \$2.11 million.

AOC 5: Contaminated Soils Area, a 6-acre area of contaminated soil for which the source is unknown (overall area is 50-acres). The selected remedy is a solid waste/asphalt cap at an estimated cost of \$2.40 million.

AOC 6: Asbestos Landfill, a 15-acre landfill used to dispose of waste from the manufacture of structural insulation board containing asbestos. The landfill was capped in 1984 by the EPA as part of a removal action. The selected remedy is maintenance of the existing cap at an estimated cost of \$1.31 million.

AOC 7: Asbestos Lagoons, three lagoons (unlined) that were used to hold asbestos slurry; asbestos from the lagoons was disposed of in the asbestos landfill. The selected remedy is a solid waste cap at an estimated cost of \$2.9 million.

On June 7, 2005, EPA issued special notice letters, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, to four potentially responsible parties (PRPs): Boston & Maine Corporation (B&M); BNZ Materials, Inc. (BNZ); Eastern Terminals, Inc. (Eastern); and the Massachusetts Bay Transportation Authority (MBTA). B&M, BNZ and the MBTA (Settling Defendants) have agreed to perform the RD/RA at OU3, as set forth in a letter dated September 28, 2006.

On August 27, 2007, the Settling Defendants submitted a formal application for preauthorization as required by Section 300.700(d) of the NCP and 40 C.F.R. Section 307.22. Agreement in principle on a Consent Decree between the United States and the Settling Defendants has been reached, and the Consent Decree is expected to be executed simultaneously with this Preauthorization Decision Document (PDD). This PDD approves the Settling Defendants' request for preauthorization subject to performance of the Work, as defined in the Consent Decree. This PDD will be attached to the Consent Decree.

### III. DESCRIPTION OF THE REMEDY

The main components of the remedy are as follows:

A. The source control remedy for AOC 1, the **B&M Railroad Landfill AOC**, includes:

1. *excavating landfill material from the edge of the wetland to minimize impacts of the cleanup action;*

Install sheet piling along the edge of the wetland. Excavate waste material along edge of wetland. Place excavated material on landfill

2. *capping landfill material;*

Cap landfill: grade slopes, install: Double barrier cap (Region 1 Alternative Cap Design). In addition, install storm-water drainage structures (swales, rip-rap, perimeter drains), detention basins and gas vents, as necessary.

3. *erecting a fence around the landfill;*

Install fence to prevent unauthorized access in order to safeguard the public, and prevent damage to landfill structures.

4. *instituting land use restrictions;*

Restrict activities (like excavation and construction) which may damage the landfill cap and cause exposure to and migration of landfill contaminants.

5. *restoring wetlands impacted by the cleanup;*

Install wetland soils and replant with appropriate species as necessary. The limits of the wetland restoration will be determined during remedial design.

6. *inspecting & maintaining the landfill cap & fence on a periodic basis to ensure that it remains effective, inspecting and monitoring institutional controls and inspecting and maintaining restored wetland areas;*

Maintenance program to inspect landfill structures and institutional controls and restored wetland areas and maintain/repair as necessary.

7. *sampling groundwater periodically to assess the effects of the source control action (capping) & any ongoing impacts from the landfill. Installing, if necessary, new monitoring wells.*

Monitor groundwater quality downgradient of landfill.

- B. The source control remedy for AOC 2, the **RSI Landfill AOC**, includes:

1. *capping landfill material;*

Cap landfill: grade slopes, install: Single barrier - Solid Waste cap. In addition, install storm-water drainage structures (swales, rip-rap, perimeter drains), detention basins and gas vents, as necessary.

2. *erecting a fence around the landfill;*

Install fence to prevent unauthorized access in order to safeguard the public, and prevent damage to landfill structures.

3. *instituting land use restrictions;*

Restrict activities (like excavation and construction) which may damage the landfill cap and cause exposure to and migration of landfill contaminants.

4. *inspecting & maintaining the landfill cap & fence on a periodic basis to ensure that it remains effective and inspecting and monitoring institutional controls;*

Maintenance program to inspect landfill structures and institutional controls and maintain/repair as necessary.

5. *sampling groundwater periodically to assess the effects of the source control action (capping) & any ongoing impacts from the landfill. Installing, if necessary, new monitoring wells.*

Monitor groundwater quality downgradient of landfill

C. The source control remedy for AOC 3, the **B&M Locomotive Shop Disposal Areas AOC**, includes:

1. *capping disposal area;*

Cap disposal area: Grade slopes, install: Single barrier - Solid Waste cap. In addition, install storm-water drainage structures (swales, rip-rap, perimeter drains), detention basins and gas vents, as necessary.

2. *erecting a fence around the landfill;*

Install fence to prevent unauthorized access in order to safeguard the public, and prevent damage to landfill structures.

3. *instituting land use restrictions;*

Restrict activities (like excavation and construction) which may damage the landfill cap and cause exposure to and migration of landfill contaminants.

4. *restoring wetlands impacted by the cleanup;*

Install wetland soils and replant with appropriate species as necessary.

5. *inspecting & maintaining the landfill cap & fencing on a periodic basis to ensure that it remains effective, inspecting and monitoring institutional controls and inspecting and maintaining restored wetland areas;*

Maintenance program to inspect landfill structures, fence, and institutional controls and restored wetland areas and maintain/repair as necessary.

6. *sampling groundwater periodically to assess the effects of the source control action (capping) & any ongoing impacts from the landfill. Installing, if necessary, new monitoring wells.*

Monitor groundwater quality downgradient of landfill

D. The source control remedy for AOC 4, the **Old B&M Oil/Sludge Recycling Area AOC**, includes:

1. *capping contaminated soils with a gravel/asphalt barrier (final area to be capped will be determined via a pre-design study)*

Cap area with a gravel/asphalt barrier based on relevant and appropriate Solid Waste capping standards (final area to be capped will be determined via a pre-design study) (taking into account previous activities by former and/or current owners and operators of AOC 4)

2. *instituting land use restrictions;*

Restrict activities (excavation and construction) which may damage the cap and permit exposure to contaminated material.

3. *sampling groundwater periodically to assess the effects of the source control action (capping). Installing, if necessary, new monitoring wells.*

Monitor downgradient groundwater quality

4. *inspecting and maintaining the gravel/asphalt barrier and inspecting and monitoring institutional controls.*

E. The source control remedy for AOC 5, the **Contaminated Soils Area AOC**, includes:

1. *capping contaminated soils;*

Cap area with a gravel/asphalt barrier based on relevant and

appropriate Solid Waste capping standards. Special care will be required to conduct capping activities in rail yard areas;

2. *instituting land use restrictions;*

Restrict activities (excavation and construction) which may damage the cap and permit exposure to contaminated material.

3. *sampling groundwater periodically to assess the effects of the source control action (capping). Installing, if necessary, new monitoring wells.*

Monitor downgradient groundwater quality

4. *inspecting and maintaining the gravel/asphalt barrier and inspecting and monitoring institutional controls.*

F. The source control remedy for AOC 6, the **Asbestos Landfill AOC**, includes:

1. *inspecting & maintaining the existing gravel & vegetated soil cap to ensure asbestos material does not become airborne;*

Maintenance program to inspect existing landfill structures and maintain/repair as necessary.

2. *erecting & maintaining a fence around the landfill;*

Install fence to prevent unauthorized access in order to safeguard the public, and prevent damage to landfill structures.

3. *instituting land use restrictions;*

Restrict activities (like excavation and construction, residential use) which may damage the landfill cap and cause exposure to and migration of landfill contaminants (asbestos).

4. *sampling groundwater periodically to assess the effects of the source control action (capping) & any ongoing impacts from the landfill. Installing, if necessary, new monitoring wells.*

Monitor downgradient groundwater quality



5. *inspecting and maintaining the landfill cap and fence and inspecting and monitoring institutional controls.*

G. The selected remedy for AOC 7, the **Asbestos Lagoons AOC**, includes:

1. *capping lagoon material;*

Cap lagoons: define limits of contamination, including potential satellite deposits, grade slopes/berms, install: soil/fill if necessary for subgrade; Single barrier - Solid Waste cap. In addition, install storm-water drainage structures (swales, rip-rap, perimeter drains), detention basins, as necessary.

2. *erecting a fence around the capped material;*

Install fence to prevent unauthorized access in order to safeguard the public, and prevent damage to cap structures.

3. *instituting land use restrictions;*

Restrict activities (like excavation and construction, residential use) which may damage the cap and cause exposure to and migration of capped contaminants (asbestos).

4. *inspecting & maintaining the cap & fence on a periodic basis to ensure that it remains effective and inspecting and monitoring institutional controls;*

Maintenance program to inspect cap structures and institutional controls and maintain/repair as necessary.

5. *sampling groundwater periodically to assess the effects of the source control action (capping) & any ongoing impacts from the landfill. Installing, if necessary, new monitoring wells.*

Monitor groundwater quality downgradient of lagoons.

#### IV. FINDINGS

Preauthorization (i.e., EPA's prior approval to submit a claim against the Superfund for reasonable and necessary response costs incurred as a result of carrying out the NCP) represents EPA's commitment to reimburse a claimant from the Superfund, subject to any maximum amount of money set forth in this PDD, if the response action is conducted in accordance with the preauthorization and costs are reasonable and necessary. Preauthorization is a discretionary action by the Agency taken on the basis of certain determinations.

EPA has determined, based on its evaluation of relevant documents and the Settling Defendants' Application for Preauthorization (Application) pursuant to 40 C.F.R. Section 300.700(d) that:

- (A) A release or potential release of hazardous substances warranting a response under Section 300.415 of the NCP exists at the Site;
- (B) The Settling Defendants have agreed to implement the cost-effective remedy selected by the EPA to address the threat posed by the release at OU3 of the Site. The estimated cost of the OU3 remedy is \$23,500,000;
- (C) The Settling Defendants have demonstrated engineering expertise and knowledge of the NCP and attendant guidance;
- (D) The activities proposed by the Settling Defendants, when supplemented by the terms and conditions contained herein, are consistent with the NCP; and
- (E) Consistent with 40 C.F.R. § 307.23, the Application submitted by the Settling Defendants demonstrates a knowledge of relevant NCP provisions, 40 C.F.R. Part 307, and EPA guidance sufficient for the conduct of the required remedial action at OU3 of the Site.

The Settling Defendants are generally obligated to comply with all provisions and representations in the Application, and to notify EPA of any changed circumstances which alter those provisions. If circumstances change between the date that the Application was submitted, and the time of remedy implementation, it is within EPA's sole discretion to determine which Application provisions are still valid and which provisions no longer apply. The Consent Decree, including the terms and conditions of the PDD, the ROD, and the Statement of Work (SOW) shall govern the conduct of response activities at the Site. In the event of any ambiguity or inconsistency between

the Application and this PDD with regard to claims against the Fund, the PDD and the Consent Decree shall govern.

V. PREAUTHORIZATION DECISION

EPA agrees to reimburse the Settling Defendants for an amount not to exceed two million five hundred thousand dollars (\$2,500,000) of the reasonable and necessary eligible costs of design and construction incurred by the Settling Defendants in carrying out the Work specified in Section VI of the Consent Decree.

This preauthorization is subject to the Settling Defendants' compliance with the Consent Decree and the provisions of this PDD.

VI. AUDIT PROCEDURES

The Settling Defendants shall develop and implement audit procedures which will ensure their ability to obtain and implement all agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. Section 307.32(e). Those requirements shall include but not necessarily be limited to the following procedures:

A. The Settling Defendants will develop and implement procedures for procurement transactions which: (1) provide maximum open and free competition; (2) do not unduly restrict or eliminate competition; and (3) provide for the award of contracts to the lowest, responsive, responsible bidder. 40 C.F.R. § 307.21(e). The Settling Defendants and their contractors shall use free and open competition for all supplies, services and construction with respect to the Work performed at OU3 of the Site. There are a number of ways that the Settling Defendants can meet these requirements including but not limited to the following:

1. For example, if the Settling Defendants award a fixed price contract to a prime contractor, the Settling Defendants will have satisfied the requirement of open and free competition with regard to any subcontracts awarded within the scope of the prime contract.

2. The Settling Defendants are not required to comply with the Federal procurement requirements found at 40 CFR Part 33 or EPA's *Guidance on State Procurement Under Superfund Remedial Cooperative Agreements* (OSWER Directive 9375.1-11, June 1988), in meeting these requirements. However, EPA does require that the Settling Defendants use these documents for guidance in developing procurement procedures for small purchases, formal

advertising, competitive negotiations, and noncompetitive negotiations as each may be appropriate to remedying the release or threat of release at OU3 of the Site.

B. The Settling Defendants may use a list or lists of pre-qualified persons, firms, or products to acquire goods and services. The Settling Defendants shall make each pre-qualification using evaluation methods and criteria which are consistent with the selection and evaluation criteria developed pursuant to Section V.A. above. Such list(s) must be current and include enough qualified sources to ensure maximum open and free competition. The Settling Defendants shall not preclude potential offerors not on the pre-qualified list from qualifying during the solicitation period.

C. The Settling Defendants shall develop and implement procedures to settle and satisfactorily resolve all contractual and administrative matters arising out of agreements to perform preauthorized response actions, in accordance with sound business judgment and good administrative practice as required by 40 C.F.R. Section 307.32(e).

All of the following actions shall be conducted in a manner to assure that the preauthorized response actions are performed in accordance with all terms, conditions and specifications of contracts as required by EPA: (1) invitations for bids or requests for proposals; (2) contractor selection; (3) subcontractor approval; (4) change orders and contractor claims (procedures should minimize these actions); (5) resolution of protests, claims, and other procurement related disputes; (6) subcontract administration.

D. The Settling Defendants shall develop and implement a change order management policy and procedure generally in accordance with EPA's guidance entitled *Procurement Under Superfund Remedial Cooperative Agreements* (OSWER Directive 9375.1-11, June 1988).

E. The Settling Defendants shall develop and implement a financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations.

## VII. CLAIMS PROCEDURES

A. Pursuant to Section 111(a)(2) of CERCLA, EPA may reimburse necessary response costs incurred as a result of carrying out the NCP that satisfy the requirements of 40 C.F.R. Section 307.21, subject to the following limitations:

1. Costs may be reimbursed only if incurred after the effective date of this PDD; and
2. The Statement of Work requires that the Settling Defendants develop and submit an Operation and Maintenance Plan for each AOC to EPA. Activities included within each Plan and costs associated with such activities are ineligible for reimbursement from the Fund.

Claims will be reviewed by EPA's Project Coordinator, as designated in the Consent Decree, and EPA's Office of Environmental Stewardship (Superfund Legal Office) to determine compliance with the terms of this PDD. EPA's Office of Inspector General (or its designee) will review the claim for consistency with generally accepted accounting practices.

B. In submitting claims to the Superfund, the Settling Defendants shall:

1. Document that response activities at the AOC that is the subject of the claim were preauthorized by EPA;
2. Substantiate all claimed costs through an adequate financial management system that consistently applies generally accepted accounting principles and practices and includes an accurate, current, and complete accounting of all financial transactions for the project, complete with supporting documents, and a systematic method to resolve audit findings and recommendations; and
3. Document that all claimed costs were eligible for reimbursement, consistent with applicable requirements of 40 C.F.R. Part 307.

C. (1) Claims may be submitted against the Fund by the Settling Defendants only while the Settling Defendants are in compliance with the terms of the Consent Decree. (2) The Settling Defendants may submit the first claim for reimbursement, up to \$939,600 of the reasonable and necessary eligible costs incurred by Settling Defendants, after EPA's approval of the Final Remedial Construction Report, described in Section VI.H of the SOW, for at least one Area of Concern. The Settling Defendants may submit a second claim for reimbursement, up to \$780,200 of the reasonable and necessary eligible costs incurred by Settling Defendants, after EPA's approval of the Final Remedial Construction Report for at least one additional Area of Concern. The Settling Defendants may submit a third claim for reimbursement, up to \$780,200 of the reasonable and necessary eligible costs incurred by Settling Defendants, after EPA's approval of the Final Remedial Construction Report for a third Area of Concern. If necessary, Settling Defendants may submit one additional claim for reimbursement, but the total reimbursement shall not exceed \$2,500,000 of the total

reasonable and necessary eligible costs incurred by Settling Defendants performing the Work (as defined in the Consent Decree) for OU3. (3) If any claim should be less than the maximum amount authorized under Section VII.C(2) herein for such claim, the difference between the maximum amount authorized and the amount claimed shall be added to the maximum amount authorized in the next claim period (this only applies to allowable costs). By way of example only, if the claim should be \$900,000 (rather than \$939,600) for the first claim submitted, \$819,800 (rather than \$780,200) shall be available for payment to the Settling Defendants in the second claim period.

D. Payments for authorized claims hereunder shall be made by EPA in accordance with wire transfer instructions and a point of contact included in each claim submission. A copy of each claims submission, including such wiring instructions, shall be sent to each Settling Defendant at the time it is submitted to EPA.

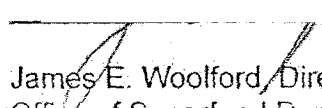
#### VIII. OTHER CONSIDERATIONS

A. This PDD is intended to benefit only the Settling Defendants and EPA. It extends no benefit to nor creates any right in any third party.

B. If any material statement or representation made in the Application is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn following written notice to the Settling Defendants. Disputes arising out of EPA's determination to withdraw its preauthorization shall be governed by Section XVII (Mixed Funding) of the Consent Decree. Criminal and other penalties may apply as specified in 40 C.F.R. § 307.15.

C. The Fund's obligation in the event of failure of the remedial action shall be governed by Section 122(b)(4) of CERCLA, and 40 C.F.R. Section 307.42. EPA may require the Settling Defendants to submit any additional information needed to determine whether the actions taken were in conformance with the Consent Decree and the Statement of Work, and were reasonable and necessary.

D. This preauthorization shall be effective as of the date of signature; provided, however, that no claim will be submitted to the Superfund prior to entry of the Consent Decree by the Court.

  
James E. Woolford, Director,  
Office of Superfund Remediation and Technology Innovation, EPA

9/18/07